

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	)	Examiner: Kemmerer, Elizabeth C.
	)	
GODDARD, et al.	)	Art Unit: 1646
	)	
Application Serial No. 09/902,713	)	Confirmation No. 1320
	)	
Filed: July 10, 2001	)	Attorney's Docket No. 39780-1618P2C34
	)	
For: <b>ANTIBODIES TO PRO269</b>	)	<b>Customer No. 77845</b>
<b>POLYPEPTIDES</b>	)	
	)	

FILED VIA EFS DATE MAILED: SEPTEMBER<sup>23</sup>, 2008

**RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF**

**MAIL STOP APPEAL BRIEF - PATENTS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

On November 30, 2007, the Examiner made a final rejection to pending Claims 39-43. A Notice of Appeal was filed on February 2, 2008. An Appeal Brief was then filed May 20, 2008. A Notice of Non-compliant Appeal Brief was mailed on June 5, 2008, indicating that Appellants' Brief did not comply with the items required under 37 CFR 41.37(c) (1)(v). Appellants submitted a Response to the Notice Non-Compliant Appeal Brief on July 2, 2008.

A second Notice of Non-compliant Appeal Brief was mailed on August 29, 2008, indicating that Appellants' Brief does not contain a correct copy of the appealed claims as an appendix thereto required under 37 CFR 41.37(c)(1)(viii)). As noted by the United States Patent and Trademark Office, page 21 was missing from the appeal brief of May 20, 2008, which supposedly provided the claims appendix. Appellants submit herewith page 21 of the appeal brief as requested.

The Board is requested to refer to the Appeal Brief submitted in its entirety dated May 20, 2008. This response to Non-Compliant Brief is timely filed, within the required on month period for reply.

### CONCLUSION

For the reasons given above, Appellants submit that the Appeal Brief submitted with regards to the instant application meets the requirements of 37 C.F.R. §41.37(c)(1)(viii)).

Accordingly, Appellants hereby request consideration by the Board of Patent Appeals and Interferences.

Please charge any additional fees, including fees for additional extension of time, or credit overpayment to Deposit Account No. 50-4634 (referencing Attorney's Docket No. 123851-181890 (39780-1618-P2C34)).

Respectfully submitted,

Date: September 23, 2008

By:   
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## VIII. CLAIMS APPENDIX

### Claims on Appeal

- 39. An isolated antibody that specifically binds to the polypeptide of SEQ ID NO: 96.
- 40. The antibody of Claim 39 which is a monoclonal antibody.
- 41. The antibody of Claim 39 which is a humanized antibody.
- 42. The antibody of Claim 39 which is an antibody fragment.
- 43. An isolated antibody that specifically binds to the polypeptide of SEQ ID NO: 96 which is labeled.